

# Notice of Allowability

Application No.

10/609,171

Examiner

Mary Hoffman

Applicant(s)

AUGER ET AL.

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 08/20/2007.
2. ☒ The allowed claim(s) is/are 1,3,4,5,6,7,8,9,10,11,12,13,14,27,28.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

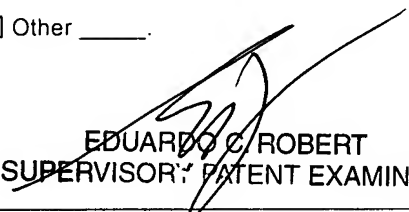
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 20070919
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Stephen Manich on 9/17/2007.

The application has been amended as follows:

In claim 1, line 3, insert --first-- before "shim arm and" and insert --first-- before "shim arm;".

In claim 1, line 4, insert --second-- before "shim arm and" and insert --second-- before "shim arm;".

In claim 1, line 27-28, replace "femoral guide surface" with --femoral surface--.

In claim 10, line 1, insert --first-- before "shim".

In claim 12, delete "of the distal side of the cutting block portion and the tibial surface of the guide arm.portion".

In claim 28, replace "two" with --the first and second--.

The following is an examiner's statement of reasons for allowance:

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The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest:

"A kit for locating a distal femoral resection plane in uni-compartmental knee surgery, the kit comprising: a first shim including a first shim arm and a mounting member connected to the first shim arm; a second shim including a shim arm and a mounting member connected to the second shim arm; and a combination cutting and spacer guide including a cutting block portion and a guide arm portion, the cutting block portion having an anterior side and a posterior side and surfaces defining a cutting guide slot extending from the anterior side to the posterior side, the cutting guide slot lying in a plane defining the distal femoral resection plane, the guide arm portion having a posterior end spaced from the cutting block portion, a planar femoral surface extending outward from the posterior side of the cutting block portion to the posterior end, and a planar tibial surface extending from the cutting block portion outward to the posterior end, the planar femoral surface lying in a plane spaced from the plane of the planar tibial surface, the planes of the tibial surface and femoral surface being substantially parallel to and spaced from the distal femoral resection plane of the cutting guide slot; the combination cutting and spacer guide having a shim mounting opening; wherein each shim arm has a planar guide arm contact surface for contacting part of the guide arm portion and a planar bone contact surface for contacting part of one of the bones of the knee, the mounting member being sized and shaped to be receivable within the mounting opening of the combination cutting and spacer guide to removably mount the shim to the guide arm portion; wherein the planar bone contact surface of each shim arm is parallel to the cutting guide slot when the shim is mounted to the guide arm portion; wherein the planar guide arm contact surface of at least one of the shim arms has a surface area substantially the same as the surface area of the femoral surface of the guide arm portion of the combination cutting and spaced guide; and wherein the planar guide arm contact surface of at least one of the shim arms covers at least a portion of one of the planar femoral surface and the planar tibial surface of the guide arm portion when the shim is mounted to the guide arm portion; wherein the first and second shims are discrete components separately mountable to the guide arm portion; wherein each shim arm has a thickness between the guide arm contact surface and the bone contact surface; and wherein the thickness of the first shim arm is less than the thickness of the second shim arm." (claim 1)

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The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest:

"A kit for locating a distal femoral resection plane in uni-compartmental knee surgery, the kit comprising: a femoral shim including a shim arm and a mounting member connected to the shim arm; and a combination cutting and spacer guide including a cutting block portion and a guide arm portion, the cutting block portion having an anterior side and a posterior side and surfaces defining a cutting guide slot extending from the anterior side to the posterior side, the cutting guide slot lying in a plane defining the distal femoral resection plane, the guide arm portion having a posterior end spaced from the cutting block portion, a planar femoral surface extending outward from the posterior side of the cutting block portion to the posterior end, and a planar tibial surface extending from the cutting block portion outward to the posterior end, the tibial surface and femoral surface being substantially parallel to and spaced from the distal femoral resection plane; the combination cutting and spacer guide having a shim mounting opening; wherein the femoral shim arm has a planar contact surface for contacting part of the guide arm and a planar contact surface for contacting part of femur and has a surface area substantially the same as the surface area of the femoral surface of the guide arm of the combination cutting and spacer guide; wherein the mounting member of the femoral shim is sized and shaped to be receivable within the mounting opening of the combination cutting and spacer guide to removably mount the femoral shim to the guide arm; the kit further comprising at least one tibial shim having a tibial shim arm and a tibial shim mounting member connected to the tibial shim arm wherein the tibial shim arm has a planar contact surface for contacting part of the guide arm and a planar contact surface for contacting part of the tibia, the tibial shim mounting member being sized and shaped to be receivable within the shim mounting opening of the combination cutting and spacer guide to removably mount the tibial shim to the guide arm, the tibial shim and the femoral shim being discrete elements separately mountable to the combination cutting and spacer guide." (claim 3)

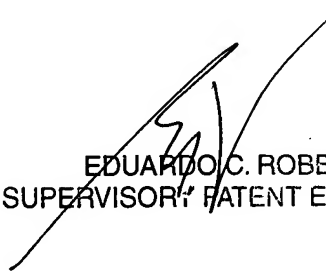
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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